**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:**

**1. CWP.No.212 of 2002.**
**2. CWP.No.51 of 2002.**

**Date of Decision : 16.3.2007..**

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1. CWP.No.212 /2002.

Baldev Singh ….Petitioner.

Versus:

Union of India and another. …Respondents.

For the petitioner: Mr.Bhuvnesh Sharma, Advocate with Mr.Ramakant Sharma, Advocate.

For Respondents. Mr.M.A.Khan, Central Govt. Counsel.

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2. CWP.No.51 /2002.

Kuldeep K.Verma ….Petitioner.

Versus:

Union of India and another. …Respondents.

For the petitioner: Ms.Sunita Sharma, Advocate

For Respondents. Mr.M.A.Khan, Central Govt. Counsel.

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Coram:

**The Hon'ble Mr.Justice Sanjay Karol, Judge.**

Whether approved for reporting?[1]

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

**Sanjay Karol, J (Oral).**

The above writ petitions have been filed seeking issuance of a writ to the respondents to grant disability pension to the petitioners with effect from due date with all consequential benefits.

Before I advert to the relevant facts, it will be necessary to note down the position of law with regard to admissibility of disability pension to various personnel in the Army. Pension Regulations for Army, 1961 (herein-after referred to as `the Regulations") have been brought for settlement of all claims of pension, gratuity and allowances of personnel of Indian Army, at the time of individual's retirement, release, resignation, discharge and death etc.. Part-I of these Regulations stipulates that unless otherwise specifically provided a disability pension may be granted to any individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II. Appendix-II referred to in Regulation 173 has 9 Clauses and Annexures. For the purposes of entitlement and disbursement of disability pension, Clause (2), Clause (4) and Clause (7) of Appendix-II is relevant. The Army Act, 1950 (Section 192) empowers the Central Government to frame Regulations for defence personnel. Clause (ii) clearly stipulates that disablement or death shall be accepted as **due**

**to military service** provided it is certified that the disablement is due to a wound, injury or disease attributable to military service, or arose during military service and has been and remains aggravated thereby. The relevant rules are Rules 2,3,4 and 7 which read as follows:

> "2 Disablement or death shall be accepted as due to military service provided it is certified that:
> (a) the disablement is due to a wound, injury or disease which—(i) is attributable to military service'; or (ii) existed before or arose during military service and has been and remains aggravated thereby;
> (b) the death was due to or hastened by—(i) a wound, injury or disease which was attributable to military service; or (ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.
> (3) There must be a casual connection between disablement and military service for attributability or aggravation to be conceded.
> (4) In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service cases.
> (7) In respect of disease, the following rules will be observed:
> (a) Cases, in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease will fall for acceptance on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service.

(c) If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service"

Whether the disability is due to an injury which is attributable to military service or an injury which existed before or arose during military service and has been and remains aggravated thereby is an issue which has been considered both by this Court as also the apex Court. These Regulations have been enacted to confer certain benefits upon Army personnel who have rendered their services in various forms and places under extreme climatic condition and is undoubtedly a beneficial legislation. While interpreting the provisions of such legislation, the Court has always adopted liberal construction favouring claims. The beneficial legislation is statutorily and necessarily required to confer benefits, rather than deprive them of the disability pension. In fact, in order to safeguard the rights of persons with disabilities and enabling them to enjoy equal opportunity and

help them to fully participate in national life, the Central Government has also come out with a comprehensive legislation which is commonly known as "Persons and disabilities, equal opportunity, protection of rights and other participation Act", 1995. The petitioners are not seeking any relief in terms of this statute. But be that as it may the fact of the matter that keeping in view the various hardship which the citizens of the country have been facing and as encouragement thereof a comprehensive legislation has been brought in to provide remedial measures for the disabled persons who have contributed in great measure and value in protecting this Country and defending its barriers. A person does not acquire or suffer disability by choice and such a person, if not protected, is not only bound to suffer personally but also make other suffer who are dependant upon him economically and socially. Of course, the entitlement of pension has to be within the frame work of the Regulations which have been interpreted by various Courts from time to time. Recently, this Court in a judgment rendered CWP.No.742 of 2003 titled ***as Santosh Kumar Vs. Union of India and others*** has held that a person is entitled to disability pension while considering various provisions of the Regulations. And earlier decisions of this Court in ***Piar Chand V. Union of India and another***, 1995 (2) S.L.J. 1230, CWP.No.382 of 1992, ***Ajit Kumar Vs. Union of India*** , ***Chamel Singh Versus Union of India and others*** Latest HLJ 2004 HP 671 and three decisions of the apex Court in

***Union of India and another Vs. Baljit Singh*** (1996) 11 Supreme Court Cases 315 , ***Union of India and others Vs. Dhir Singh China, Colonel*** (2003) 2 Supreme Court Cases 382 ***and Controller of Defence Accounts (Pension) and others Vs. S.Balachandran Nair*** (2005) 13 Supreme Court Cases 128 have held that to be entitled to disability pension, it must be established that the disability has occurred due to a wound injury or disease which is attributable to military service or existed before or during military service and has been and remains aggravated thereby. It is also to be established that the condition of military service determine or contribute to the onset of the disease condition totally attributable to the military service as also the aggravation thereof. Undoubtedly, the opinion of the Medical Board is to be given primacy. However, the circumstance rendering the said opinion assailable would empower and entitled this Court to step in, examine the same and if need be set aside the same for effectuating justifiable statutory relief as may be necessitated under the various circumstances.

Undoubtedly, the Court is duty bound to liberal construe beneficial legislation. In ***Lance Dafadar Joginder Singh Vs. Union of India and others*** 1995 Supp (3) Supreme Court Cases 232 , the apex Court has held that army personnel on casual leave would be deemed to be in service. While considering individual cases, the Court has also to see as to whether the claims have been rendering service without any complaint and that the disease which he suffered

from during his service was not self acquired and after the discharge from the service he would be left without any means of livelihood, he would have support his family consisting of his parents, wife, children and dependant on him.

***CWP NO. 212 OF 2002***

Civil Writ Petition No.212 of 2002 has been filed by the petitioner stating that after serving in JAK Rifles from 23rd November, 1962 upto November 1977, the petitioner got himself enrolled in Defence security Corps under the respondents on 6th October, 1983 as Sepoy. He was promoted to the post of Lance Naik and subsequently promoted and posted as Naik. He has been successfully discharging his duties to the best of his ability and to the entire satisfaction to his superiors without any complaint from any quarter concerned. The petitioner is stated to have suddenly suffered an attack of `Paralysis' on 19th September, 1999 and he was admitted in Military Hospital in Pathankot on 20th September, 1999 where he got himself treated upto 25th October, 1999. He appeared before the Medical Board on 24th and 25th October, 1999 when he was found medically unfit on account of `Paralysis' as a consequence of having acquired disability. He was discharged from the service with effect from 30th November, 1999 on account of disability arisen due to the disease. The petitioner is stated to have forwarded his claim for grant of disability pension in January, 2000 which was rejected. The petitioner preferred an appeal to the

respondent-Government of India, Ministry of Defence which was also rejected on the ground that the disability on account of which the petitioner was discharged from service is constitutional disorder and that the disability is neither attributable nor aggravated due to military service. The rejection of the petitioner's claim in terms of orders dated 22nd June, 2000 and 19th September, 2000 is assailed.

In a joint reply filed on behalf of the respondents with regard to the admissibility of disability pension, it is stated that the Medical Board recommended release of the petitioner in medical category CEE (Permanent) due to disabilities (1) Cerebro Vascular Disease (R Hemiplegia Lacunar Stroke) assessed at 30% for two years, and (2) Coronary Artery Disease (Silent) assessed at 20 % for two years (Composite assessment of all disabilities is 50%). The disability is stated to have been acquired while the petitioner was on annual leave and as per the practice in vogue at the time of enrolment of the petitioner with the respondent on 6th October, 1983 only preliminary medical examination was conducted as the Recruiting Medical Officer could not detain him longer duration to detect this constitutional disorder. It is also averred that in view of the decision of the apex Court in Union of India and another Vs. Baljit Singh's case (supra), it has to be established that the condition of the military service determined or contributed to the onset of the disease and that conditions were due to the circumstances of duty in military service.

In ***Santosh Kumar's*** case, this Court has held that a person is entitled to disability pension by establishing that the disability has occurred due to a wound injury or disease which is attributable to military service or existed before or arose during military service which has been and remains aggravated thereby. The Court can in a writ jurisdiction unsettle the opinion of the Medical Board for justifiable reason. While considering the case on factual matrix in Santosh Kumar's case, this Court has taken a cognizance of the fact that the petitioner therein had been in army from the year 1982 till 1989. He had been serving in remote areas in hard and difficult conditions. The petitioner therein was suffering from "Schizophrenia" which was necessarily aggravated by stress and strain. In that case, the Court set aside the report of Medical Board in view of the fact that they had been considered the material and evidence in the light of Rule 4 of entitlement rules in Appendix-II. The Court directed payment of disability pension to the petitioner with interest.

In my view, the petitioner has made out a case for interference under Article 226 both in law and in equity. The petitioner undoubtedly has served the army for 16 years. It has been categorically stated that he has rendered services for the cause of the Nation at different hard/difficult areas and conditions and successfully discharged his duties under physical and mental stress and strain and that the disease has aggravated due to military service. My attention has

been drawn to Annexure:P-2 at page 29, report of the Medical Board whereby it has been categorically held:

> "Medical Board has opined that both the IDs are aggravated by stress and strain of service "

The facts of the instant case, in my considered view are squarely covered by a decision rendered by a Division Bench of this Court reported in ***Piar Chand V. Union of India and another,*** 1995 (2) S.L.J. 1230. Even though, the petitioner in that case was suffering from `Epilepsy' assessed at 20 per cent. However, relying upon the recommendation of the Board to the effect that the disability is aggravated due to severe physical and mental stress of service, this Court held that disability pension can be granted to an individual who is invalidated from service on account of disability which is attributable to or aggravated by the military service. It is undisputed that at no point of time prior to September, 1999, the petitioner suffered from ailment. Even at the time of recruitment no such ailment/disease was discovered. He was recruited as hail and hearty person and has served the Nation and has been remained satisfactorily in his service for more than 16 years. The totality of the circumstance including report of the doctors and the fact that the aggravation of the disease is due to military service, I am of the considered view that the petitioner is totally entitled for disability pension in terms of Clause-2 (i), (ii), (iii) and (vii) of the Regulations.

As I have noticed that the disease is pertaining to nervous system and Coronary Artery System which relates to heart. It can definitely be caused and aggravated by stress and strain. It is undisputedly that the petitioner has been working under severe harsh and difficult conditions and circumstances. He is stated to have worked in the field and not entirely in the office.

I have already referred to the decision of the apex Court wherein a person on leave is considered to be on service. It is not a case of the respondents that the petitioner's leave was not authorized. He was totally on leave with permission of the authority. His leave was also paid for, therefore, it will be incorrect in law to say and hold that the petitioner would be dis-entitled for disability pension.

In the facts and circumstances of the case, for the foregoing reasons, the order of the rejection of the petitioner's claim for disability is set aside.

***CWP.No.51 of 2002.***

It is the petitioner's case that he was enrolled in the army on 28th August, 1995 as Sepoy. At the time of his recruitment in the Indian Army, he was medically examined by the constituted Medical Board and was found fit both mentally as well as physically by the said Board and he was placed in the medical category `AYE'. The petitioner is stated to have excellent record and has served his superiors to the entire satisfaction without any complaint. In November, 1998, he suffered `Unspecified Psyclosis' in Hydrabad and

due to which he was discharged on 12th May, 1999. His claim for pension was rejected on the ground that the disability of the petitioner is not attributable nor aggravated by the military service. The appeal assailing the order of the rejection was also dismissed. The petitioner has assailed the said orders dated December 1999 (Annexure:P-3) and order dated 24th July, 2001 (Annexure:P-5). The order of the rejection shows that the petitioner was diagnosed as a case of `Unspecified Psychosis' and that in view of the fact that the disability has been regarded by medical authorities to have neither attributable nor aggravated due to military service , the petitioner would not entitle to disability pension.

The respondents have filed a joint reply wherein they have stated that the petitioner was declared as a patient of `Unspecified Psychosis'. He was under constant treatment and in spite of prolonged and adequate therapy, he did not show satisfactory response and continued to be a symptomatic. His medical category was recommended `EEE'. On 19th April, 1999 a duly constituted Medical Board diagnosed the petitioner's disease and disability as `unspecified Psychosis' assessed at 30 per cent for five years. From the reply filed by the respondents it is clear that the petitioner having been originally posted at Hyderabad was transferred to field service concessional area J&K w.e.f. 22nd May, 1998.

A perusal of the opinion of the Medical Board dated 3rd March, 1998 and 16th October, 1998 would show

that there has been no past or family history of mental illness. The medical Board has, in fact, recommended the petitioner for disability pension which is clear from the medical report part-5 at serial No.21 which is quoted as under:

> "Invalid/Disability Pension for which recommended and both Invalid and Disability pension "

During the course of hearing, the petitioner's discharge book duly certified on 12th January 2007 has been brought to my notice. This states that even now the petitioner is still suffering from 30 per cent disability due to `unspecified psychosis'

Additional facts which will go in favour of the petitioner is that as per Appendix-II Psychosis and Schizophrenia is a specified disease which can be affected by stress and strain. The petitioner has admittedly served in J&K for over a period of one year. In Santosh Kumar's case (supra), a Division Bench of this Court has already held that a judicial notice can be taken of the fact that where the areas are hard and difficult, particularly where there is influx of terrorist and terrorism is in increase, the army personnel working in such areas are bound to be under huge stress and strain. The recommendations of the medical report seems to be contrary on the one hand as noticed above it has recommended for disability pension on the other hand it has stated that the disease is not connected with military service.

A perusal of the report also shows that the Board was duty bound to express its views as to whether the disease is attributable to service during peace or under field service conditions or that it had been aggravated thereby and remains so. Importantly, there is no answer given by the Board to the same.

Keeping in view the peculiar facts and circumstances of the both the cases and for the aforesaid reasons, orders dated 22nd June, 2002 (Annexure: P-2) and 19th September, 2001 (Annexure P-3) in CWP No. 212 of 2002 and orders dated December, 1999 (Annexure:P-3) and 24th July, 2001 (Annexure:P-5) in CWP No. 51 of 2002 are set aside. The petitioners are entitled for all claims and benefits in accordance with the Regulations. The respondents are directed to calculate the disability pension of the petitioners in accordance with the Pension Regulations and Rules within a period of three months from today. The petitioner in CWP No. 212 of 2002 is also entitled to interest at the rate of 7.5% on the arrears of disability pension.

Both the writ petitions are accordingly allowed.

(Sanjay Karol ),
March 16, 2007 Judge.
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